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14 **UNITED STATES BANKRUPTCY COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 In re

18 ANTHONY SCOTT LEVANDOWSKI,
19 Debtor.

Bankruptcy Case No. 20-30242 (HLB)

Chapter 11

Hon. Hannah L. Blumenstiel

20 ANTHONY SCOTT LEVANDOWSKI,
21 Plaintiff,
22 UBER TECHNOLOGIES, INC.,
23 Defendant.

Adv. Proceeding No. 20-03050

**DECLARATION OF JOHN W. BERRY IN
PARTIAL SUPPORT OF DEFENDANT
UBER TECHNOLOGIES, INC.'S
AMENDED OMNIBUS MOTION TO SEAL
PURSUANT TO LOCAL RULE 79-5**

1 I, John W. Berry, hereby declare:

2 1. I am a partner at the law firm of Munger, Tolles & Olson LLP and counsel of
3 record for Google LLC (“Google”) in the above-captioned matter. I am admitted to practice
4 before all of the courts of the State of California and this Court. I have personal knowledge of the
5 facts set forth in this declaration, and, if called as a witness, I could and would testify competently
6 to the matters set forth herein

7 2. Pursuant to Civil Local Rules 79-5(d), I submit this declaration in partial support of
8 Defendant Uber Technologies, Inc.’s Amended Omnibus Administrative Motion to File Partially
9 Redacted Oppositions to Plaintiff’s Motions for Summary Judgment, to File Exhibits Under Seal,
10 and File Amended Omnibus Declaration. Dkt. No. 161.

11 3. Google requests that Exhibit 1 to the Amended Omnibus Declaration of Katherine
12 Ciliberti in Support of Uber Technologies, Inc.’s Oppositions to Plaintiff’s Motions for Partial
13 Summary Judgment (“Ciliberti Declaration”) be filed under seal. Exhibit 1 is a redacted version
14 of the Arbitration Award, dated *nunc pro tunc* December 6, 2019 (the “Arbitration Award”). *See*
15 Dkt. No. 182-1. It was produced in discovery as “Highly Confidential - Attorney Eyes’ Only”
16 under the Protective Order governing this litigation. It also contains unredacted information that
17 the Court has previously ordered can be sealed in this litigation. *See* Dkt. No. 66 (granting Uber’s
18 motion to file a version of the Arbitration Award attached to its answer where all of the pages
19 were redacted except for the cover page); Dkt. No. 159 at 5:3-6 (“the court can (and will) seal the
20 portion of the record of trial involving any discussion of the Award, consistent with its prior orders
21 sealing the Award when submitted in support of pleadings filed in this action”); *see also generally*
22 Dkt. No. 159 at 5:3-15, 6:7-12. Indeed, this largely unredacted version of the Arbitration Award
23 contains substantial amounts of confidential and highly confidential information that was
24 produced during an arbitration, pursuant to the arbitration protective order that protects both the
25 information produced and the Award’s descriptions of “information ... extracted from
26 PROTECTED INFORMATION” and “excerpts” and “summaries ... of PROTECTED
27 INFORMATION.” Arb. Prot. Order at §§ I(A)(1), (A)(5); *see also* Dkt. No. 42 (protective order).

1 4. Moreover, Exhibit 1 contains substantial amounts of confidential and highly
2 confidential information from Google, Mr. Levandowski, Uber and third parties, including
3 confidential and non-public information regarding employment and compensation information of
4 third-party Google employees, Mr. Levandowski's employment, compensation and finances,
5 Google's compensation practices and bonus plans, Google's acquisitions, technical specifications
6 of technology acquired in an acquisition and financial and technical information regarding third
7 parties. This is all information that Google treats as confidential, or has been produced to Google
8 as confidential by third parties, and is information that is confidential. Sealing of this type of
9 information is thus justified under either the "good cause" or "compelling reasons"
10 standard. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). In addition,
11 Google notes that a redacted version of the Arbitration Award has already been publicly filed. *See*
12 *Dkt. No. 16-1* (redacted version of Arbitration Award). Exhibit 1, however, reveals text that was
13 redacted in that public, redacted version of the Arbitration Award. Thus, because a public version
14 of the Arbitration Award is already on this proceeding's public docket, Google believes that
15 Exhibit 1 (which reveals Google proprietary information) should remain under seal or, if a version
16 of Exhibit 1 is publicly filed, that public version should have the same redactions as those found in
17 the redacted version of the Arbitration Award that is on the public docket at *Dkt. No. 16-1*.

18 5. Google requests that Exhibit 6 to the Ciliberti Declaration be sealed. Exhibit 6 is
19 the Settlement Agreement in *Waymo LLC v. Uber Techs., Inc.*, Case No. 3:17-cv-00939-WHA
20 (N.D. Cal.) (the "Waymo Litigation"), dated February 8, 2018 (GOOG-CHFR-00023976). *Dkt.*
21 *No. 182-3*. The Settlement Agreement is confidential by its own terms, was and is treated as
22 confidential by the parties and is sensitive for business reasons. Uber has also requested to seal
23 this document (*see Dkt. No. 161* at 4-5), as does non-party Waymo LLC. Also, the Court has
24 already permitted the sealing of the Settlement Agreement and documents discussing its terms.
25 *See Dkt. No. 28* (granting motion to redact settlement related information in Uber's opposition to
26 Google's motion to intervene); *Dkt. No. 32* (same, in Google's reply in support of its motion to
27 intervene); *Dkt. No. 44* (same, in Uber's amended answer); *Dkt. No. 156* (ordering references to
28 and descriptions and quotations of Settlement Agreement to be filed under seal); *see also Dkt. No.*

1 76 (seeking to file the Settlement Agreement under seal)). Google believes sealing Exhibit 6 in its
2 entirety is consistent with the Court's prior sealing orders.

3 6. Google requests that Exhibit 7 to the Ciliberti Declaration be sealed. Exhibit 7 is a
4 Non-Competition and Non-Solicitation Agreement by Anthony Levandowski for Anthony's
5 Robots in favor and for the benefit of Google, Inc., dated July 28, 2011 (AL-UBER0077951). Dkt.
6 No. 182-4. Exhibit 7 contains contractual terms that are non-public, confidential business
7 information. Disclosure of this information would cause competitive harm to Google's business
8 interests and disadvantage Google in future employment and acquisition negotiations. Because of
9 the nature of the agreement, Google requests that Exhibit 7 be sealed in its entirety. Sealing of this
10 type of information is thus justified under either the "good cause" or "compelling reasons"
11 standard. *Kamakana*, 447 F.3d at 1180.

12 7. Google requests Exhibit 8 to the Ciliberti Declaration be sealed. Exhibit 8 is a
13 Non-Competition and Non-Solicitation Agreement by Pierre-Yves Droz for 510 Systems in favor
14 and for the benefit of Google Inc., dated July 28, 2011 (AL-UBER0077951). Dkt. No. 182-5. Like
15 Exhibit 7, Exhibit 8 contains contractual terms that are non-public, confidential business
16 information. Disclosure of this information would cause competitive harm to Google's business
17 interests and disadvantage Google in future employment and acquisition negotiations. Because of
18 the nature of the agreement, Google requests that Exhibit 8 be sealed in its entirety. Sealing of this
19 type of information is thus justified under either the "good cause" or "compelling reasons"
20 standard. *Kamakana*, 447 F.3d at 1180.

21 8. Google requests that Exhibit 9 to the Ciliberti Declaration be sealed. Exhibit 9 is
22 Anthony Levandowski's Employment Agreement with Google, dated January 1, 2012, previously
23 marked in the Google Arbitration as TX 120 (GOOG-ALBK1-00012910). Dkt. No. 182-6. Exhibit
24 9 discusses in detail the compensation structure and confidential employment terms Google
25 offered to Anthony Levandowski when he was hired in 2012. Disclosure of these terms would
26 disadvantage Google in future efforts to recruit and retain employees. Exhibit 9 also includes
27 details of Google's Chauffeur Bonus Plan. Information about the details and structure of Google's
28 Chauffeur Bonus Plan are confidential and proprietary. Disclosure of this information would

1 cause competitive harm to Google’s business interests, advantage Google’s competitors. Because
2 of the nature of the agreement, Google requests that Exhibit 9 be sealed in its entirety. Sealing of
3 this type of information is thus justified under either the “good cause” or “compelling reasons”
4 standard. *Kamakana*, 447 F.3d at 1180.

5 9. Google requests that Exhibit 43 to the Ciliberti Declaration be sealed. Exhibit 43 is
6 an email chain from with a draft of the Settlement Agreement, dated February 4, 2018 (Uber-
7 AL_00005059). Dkt. No. 182-35. Google has already sought, and the Court has approved, sealing
8 information related to the settlement negotiations, which are subject to a confidentiality
9 agreement. *See* Dkt. No. 186 (granting Google’s request to seal exhibits describing settlement
10 negotiations). Uber has also requested to seal this document (*see* Dkt. No. 161 at 4-5), as does
11 non-party Waymo LLC. Moreover, the Court has already permitted the sealing of the Settlement
12 Agreement itself, as well as documents discussing its terms. *See* Dkt. No. 28 (granting motion to
13 redact settlement related information in Uber’s opposition to Google’s motion to intervene); Dkt.
14 No. 32 (same, in Google’s reply in support of its motion to intervene); Dkt. No. 44 (same, in
15 Uber’s amended answer); Dkt. No. 156 (ordering references to and descriptions and quotations of
16 Settlement Agreement to be filed under seal); *see also* Dkt. No. 76 (seeking to file the Settlement
17 Agreement under seal). The Settlement Agreement and the related settlement negotiations were
18 subject to a confidentiality agreement, were and are treated as confidential by the parties and are
19 sensitive for business reasons. Google believes sealing Exhibit 6 in its entirety is consistent with
20 the Court’s prior seal orders.

21 10. Google requests that Exhibit 44 to the Ciliberti Declaration be sealed. Exhibit 44 to
22 the Ciliberti Declaration is an email chain, with a draft of the Settlement Agreement, dated
23 February 5, 2018 (UBER-AL_00000799). Dkt. No. 182-36. Uber has also requested to seal this
24 document (*see* Dkt. No. 161 at 4-5), as does non-party Waymo LLC. Exhibit 44 contains
25 confidential settlement negotiation information and should be sealed in its entirety for the reasons
26 described above, *see supra* ¶ 9.

27 11. Google requests that Exhibit 45 to the Ciliberti Declaration be sealed. Exhibit 45 to
28 the Ciliberti Declaration is an email chain, with a draft settlement agreement attached, dated

1 February 5, 2018 (UBER-AL_00000799). (Dkt. No. 182-37). Uber has also requested to seal this
2 document (*see* Dkt. No. 161 at 4-5), as does non-party Waymo LLC. Exhibit 45 contains
3 confidential settlement negotiation information and should be sealed in its entirety for the reasons
4 described above, *see supra* ¶ 9.

5 12. Google requests that Exhibit 46 to the Ciliberti Declaration be sealed. Exhibit 46 is
6 Uber Technologies, Inc. Series G-2 Preferred Stock Issuance Agreement, dated March 9, 2018
7 (UBER-AL00000230). Dkt. No. 182-38. Exhibit 46 contains the specific, non-public terms of a
8 stock issuance made by Uber as part of the Settlement Agreement. Uber has also requested to seal
9 this document (*see* Dkt. No. 161 at 4-5), as does non-party Waymo LLC. As discussed above,
10 *supra* ¶ 5, the terms of the Settlement Agreement are confidential under the terms of the settlement
11 itself and so Uber and non-party Waymo have sought to seal documents containing those terms.
12 Also, the Court has already permitted the sealing of the Settlement Agreement and documents
13 discussing or revealing its terms, as this document does. *See supra* ¶ 5. Google believes sealing
14 Exhibit 6 in its entirety is consistent with the Court’s prior sealing orders.

15 13. Google requests that Exhibit 50 to the Ciliberti Declaration be sealed. Exhibit 50 is
16 a one-page wire transfer from Uber to counsel for Google, dated February 7, 2020 (UBER-AL-
17 00003045). *See* Dkt. No. 182-41. Uber has also requested to seal this document in its entirety (*see*
18 Dkt. No. 161 at 4-5). Exhibit 50 does not contain Google information, but does contain highly
19 sensitive bank account information and details for Google’s counsel, Kecker, Van Nest, & Peters
20 LLP. The disclosure of these details could result in financial harm to Kecker, Van Nest, & Peters
21 LLP. Redacting the confidential information in Exhibit 50 about Google’s counsel’s bank account
22 information is therefore appropriate. Sealing of this type of information is thus justified under
23 either the “good cause” or “compelling reasons” standard. *Kamakana*, 447 F.3d at 1180.

24 14. Google requests that deposition transcript pages 34 and 35 of Exhibit 65 to the
25 Ciliberti Declaration be sealed. Exhibit 65 to the Ciliberti Declaration is a copy of excerpts from
26 the deposition transcript of Uber’s Rule 30(b)(6) witness, Cameron Poetzsch, dated January 26,
27 2021. *See* Dkt. No. 182-56. Pages 34 and 35 of Exhibit 65 contains confidential settlement
28 negotiation information and should be sealed for the reasons described above, *see supra* ¶ 9.

1 Uber has also requested to seal this document (*see* Dkt. No. 161 at 4-5), as does non-party Waymo
2 LLC. And the Court has already sealed the page immediately preceding the portion of Mr.
3 Poetzsch deposition that Google, Uber, and Waymo LLC seek to have sealed here. *See* Dkt. No.
4 186 (granting Google’s request to seal Dkt. No. 163-3).

5 15. Google requests that Exhibit 72 to the Ciliberti Declaration be redacted and the
6 unredacted version of Exhibit 72 be filed under seal. Exhibit 72 is a copy of “excerpts from the
7 hearing in the Google Arbitration of testimony from Chelsea Bailey, John Hartog, James Haslim,
8 Brent Schwarz, and Ognen Stojanovski, dated May 1, 2018, May 3, 2018 and May 8, 2018.” *See*
9 Dkt. No. 182-63. Exhibit 72 contains sensitive internal details about Google’s personnel for its
10 self-driving car development effort. Public disclosure of this material could cause competitive
11 harm to Google by revealing business strategies and internal analysis. Sealing of this type of
12 information is thus justified under either the “good cause” or “compelling reasons”
13 standard. *Kamakana*, 447 F.3d at 1180.

14 16. Google requests that Exhibit 73 to the Ciliberti Declaration be sealed. Exhibit 73 is
15 the declaration of Mary Fulginiti Genow, dated March 17, 2021, including exhibits A-K. *See* Dkt.
16 No. 181-64. Exhibit 73 and its accompanying exhibits contain a significant amount of Google
17 confidential and personal information about Google’s current and former employees. These
18 materials also contain confidential business information about Project Chauffeur. The exhibits to
19 Exhibit 73 contain materials created during Stroz Friedberg LLP’s due diligence of Anthony
20 Levandowski in 2016. Materials related to this “pre-transaction due diligence into Mr.
21 Levandowski by Uber” have already been approved to be sealed by this court. *See* Dkt. No. 153 at
22 10 (granting motion to seal with respect to the “Third Tranche” of Stroz-related documents).

23 17. Google requests that Exhibit 74 to the Ciliberti Declaration be sealed. Exhibit 74 is
24 the declaration of Tony West, dated March 18, 2021, including an exhibit that includes a draft
25 Settlement Agreement and an email discussing the settlement negotiations. *See* Dkt. No. 182-65.
26 Exhibit 74 contains details related to settlement negotiations that were treated as confidential by
27 the parties, and should be sealed for the reasons set forth above, *see supra* ¶ 9. Uber has also
28 requested to seal this document (*see* Dkt. No. 161 at 4-5), as does non-party Waymo LLC.

18. Google requests that Exhibit 75 to the Ciliberti Declaration be sealed. Exhibit 75 to the Ciliberti Declaration is the declaration of Robert Wu, dated March 18, 2021. (Dkt. No. 182-66). Exhibit 75 contains details of the Settlement Agreement that are treated as confidential by the parties, and should be sealed for the reasons set forth above, *see supra* ¶ 5. Uber has also requested to seal this document (*see* Dkt. No. 161 at 4-5), as does non-party Waymo LLC.

19. As outlined above, Google seeks to redact Exhibit 72 rather than seal it in its entirety. Concurrently with this declaration, Google will submit for the Court's consideration a partially redacted version of Exhibit 72 under seal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of March, 2021, at Los Angeles, California.

/s/ John W. Berry
John W. Berry